

SENATE BILL 3140
By Herron

AN ACT to amend Tennessee Code Annotated, Title 53, Chapter 11, to enact the "Tennessee Chemical Control Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 53, Chapter 11, is amended by adding Sections 2--20 of this act as a new part.

SECTION 2. This act shall be known and may be cited as the "Tennessee Chemical Control Act".

SECTION 3.

(a) Domestic clandestine laboratories are capable providing enough stimulants, depressants, hallucinogens, and narcotics to satisfy America's illegal drug demand.

(b) Federal and state law enforcement officials seize an increasing number of clandestine laboratories in the 1980s. The Drug Enforcement Administration (DEA) saw a steady rise in the numbers of seized laboratories from 184 in 1981 to 810 in 1988. The Oklahoma Bureau of Narcotics (OBN) seized 28 laboratories in 1986, an almost 100% increase from the 16 laboratories seized in 1985. Another increase of over 100% occurred in 1988 when OBN seized 62 laboratories as compared to 30 laboratories the previous year. Texas narcotics officers seized 64 laboratories during 1988.

(c) Clandestine laboratories thrive where ever chemicals are readily available on the open market or easily diverted from legitimate commerce. Illegal drug production is a nomadic business. When chemicals are difficult to obtain, illegal lab operators move their operations to locations where chemical acquisition is simple. Effective regulation of chemical transactions dries up sources which supply illegal laboratories.

(d) Despite strict federal regulation of threshold amounts of chemicals since 1988, domestic opportunities for illegal chemical diversion still exist. Illicit operators restructure their actions to avoid federal regulations and focus their efforts in states without effective chemical controls. Only approximately 18 states have specific chemical tracking requirements.

(e) State by state enactment of detailed chemical controls are necessary to halt the existence and spread of clandestine laboratories across the country. The controls are designed to stop illegal drug production before it occurs by preventing illegal chemical diversion.

SECTION 4.

The purpose of this part is to prevent the illegal diversion of precursor chemicals by creating a monitoring system which traces a chemical from its distribution to its use while protecting the transfer of chemicals for legitimate commercial uses.

SECTION 5.

(a) The term "administer" means to apply a regulated chemical whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner (or in the practitioner's presence, by his authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) The term "agent or representative" means a person who is authorized to receive, possess, manufacture or distribute or in any other manner control or have access to a regulated chemical on behalf of another person.

(c) The term "broker" or "trader" means a person who assists in arranging a transaction of a regulated chemical by negotiating contracts, serving as an agent or intermediary, or bringing a buyer, seller and/or transporter together.

(d) The term "controlled premises" means:

(1) a place where regulated chemical distributors or regulated chemical possessors are required under this part to, or in fact, keep or maintain records related to regulated chemical transactions; and

(2) a place, including a factory, warehouse, establishment and conveyance, in which regulated chemical distributors or regulated chemical possessors are permitted under this part to, or in fact, possess, manufacture, compound, process, sell, deliver, or dispose of a regulated chemical;

(e) The term "delivers" or "delivery" means the actual, constructive, or attempted transfer of a regulated chemical from one person to another, whether or not there is an agency relationship.

(f) The term "dispense" means to deliver a regulated chemical to an ultimate user, patient, or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the regulated chemical for that delivery.

(g) The term "distribute" means to deliver other than by administering or dispensing a regulated chemical.

(h) The term "manager" means one who represents the interest of any owner, partner or corporate officer in the operation of a business involved in the manufacture, distribution or possession of regulated chemicals whose duties include but are not

limited to: (1) the making or changing of policy; (2) approving credit; (3) hiring or firing employees; or (4) generally exercising independent judgment in the operation of the business. Such person need not have a financial interest in the business.

(i) The term "manufacture" means to produce, prepare, propagate, compound, convert, or process a regulated chemical directly or indirectly, by extraction from substances of natural origin, chemical synthesis, or a combination of extraction and chemical synthesis, and may include packaging or repackaging of the substance or labeling or relabeling of its container. The term excludes the preparation, compounding, packaging, repackaging, labeling, or relabeling of a regulated chemical:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a regulated chemical in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale;

(j) The term "person " means any individual or entity capable of holding a legal or beneficial interest in property.

(k) The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacist, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by this state, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a regulated chemical in the course of professional practice or research.

(l) The term "regulated chemical" means a chemical that is used directly or indirectly to manufacture a controlled substance or other regulated chemical in violation of Tennessee Code Annotated, Title 39, Chapter 17, Part 4. The fact that a chemical may be used for a purpose other than the manufacturing of a controlled substance or

regulated chemical does not exempt it from the provisions of this part. The term includes:

- (1) Acetic Anhydride.
- (2) Anthranilic acid, its esters and its salts.
- (3) Benzaldehyde.
- (4) Benzyl chloride.
- (5) Benzyl cyanide.
- (6) Diethylamine and its salts.
- (7) Ephedrine, its salts, optical isomers, and salts of optical isomers.
- (8) Ethylamine and its salts.
- (9) Ergotamine and its salts.
- (10) Ergonovine and its salts.
- (11) Hydriodic acid.
- (12) Isosafrole.
- (13) Malonic acid and its esters.
- (14) 3, 4 -methylenedioxyphenyl-2-propanone.
- (15) Methylamine and its salts.
- (16) Morpholine and its salts.
- (17) N-acetyl anthranilic acid, its esters and salts,
- (18) N-ethylephedrine, its salts, optical isomers and salts of optical isomers.
- (19) N-ethylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- (20) N-methylephedrine, its salts, optical isomers, and salts of optical isomers.

(21) N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(22) Nitroethane.

(23) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(24) 1-phenyl-l-chloro-2-methylaminopropane (chloroephedrine; chlorpseudoephedrine), their salts, optical isomers, and salts of optical isomers.

(25) Phenyl-2-propanone.

(26) Phenylacetic acid, its esters and salts.

(27) Phenylpropanolamine its salts, optical isomers, and salts of optical isomers.

(28) Piperidine and its salts.

(29) Piperonal.

(30) Propionic anhydride.

(31) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(32) Pyrrolidine and its salts.

(33) Safrole.

(34) Thionylchloride.

(m) The term "regulated chemical distributor" means any person, whether or not the person is registered pursuant to this part, who manufactures or distributes a regulated chemical.

(n) The term "regulated chemical possessor" means any person who possesses a regulated chemical.

(o) The term "regulated chemical transaction" means the manufacture of a regulated chemical or the distribution of a regulated chemical within, into, or out of the state.

SECTION 6.

The provisions of this part shall not apply to:

(a) a domestic lawful distribution in the usual course of business between agents or employees of a single regulated distributor or regulated chemical possessor;

(b) a distribution of a regulated chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman;

(c) the administering or dispensing of a regulated chemical;

(d) the receipt of a regulated chemical pursuant to the lawful order of a practitioner;

(e) the purchase, distribution or possession of a regulated chemical by a local, state, or federal law enforcement agency while in the discharge of official duties unless the director of the Tennessee bureau of investigation properly notifies the law enforcement agency relying on the exclusion that its investigatory activities are contrary to the public interest;

(f) the purchase, distribution, manufacture, administering, dispensing, or possession of a drug product containing a regulated chemical if the drug product has been granted an exemption pursuant to Section 7 of this part.

SECTION 7.

(a) The director of the Tennessee bureau of investigation may, by rule or regulation adopted pursuant to the provisions of the Tennessee uniform administrative procedures act, add chemicals to or delete chemicals from the list of regulated

chemicals in Section 5 (l). In determining whether to add or delete a chemical, the director of the Tennessee bureau of investigation shall consider the following:

- (1) whether the chemical is already controlled under Tennessee Code Annotated, Title 39, Chapter 17, Part 4;
- (2) the availability of the chemical for potential illegal diversion;
- (3) the historical, actual, or potential use of the chemical in the illegal production of a substance controlled under Tennessee Code Annotated, Title 39, Chapter 17, Part 4, including the scope, duration and significance of use;
- (4) the nature and extent of the legitimate uses of the chemical;
- (5) the clandestine and legitimate importation, manufacture, or distribution of the chemical; and
- (6) any other factors relevant to and consistent with public health and safety.

(b) Notwithstanding the requirements in subsection (a), the director of the Tennessee bureau of investigation may by rule or regulation add a chemical to the list of regulated chemicals in Section 5(l) on a temporary basis to avoid an imminent hazard to the public health and safety. With respect to the finding of an imminent hazard, the director of the Tennessee bureau of investigation shall consider:

- (1) the recent history and current pattern of abuse;
- (2) the imminent risk to the public health; and
- (3) available information on factors set forth in subsection (a).

An emergency rule may not be adopted until the director of the Tennessee bureau of investigation initiates a rulemaking or other regulatory proceeding under subsection (a) with respect to the chemical. Unless the Tennessee uniform administrative procedure act provides otherwise, an emergency rule will expire on the later of:

(1) one (1) year after its adoption; or

(2) the effective date of the final rule or other conclusion of the rulemaking proceeding initiated under subsection (a).

(c) A manufacturer may apply to the director of the Tennessee bureau of investigation for an exemption of a drug product containing a regulated chemical from the provisions of this part on a form which the director of the Tennessee bureau of investigation shall furnish upon request. The director of the Tennessee bureau of investigation shall grant the exemption upon finding that the applicant has shown by a preponderance of the evidence that the drug product is manufactured and distributed in a manner which prevents its illegal diversion. In making the finding, the director of the Tennessee bureau of investigation shall consider:

(1) evidence of illegal diversion of the drug product, including the scope, duration and significance of the diversion;

(2) whether the drug product is formulated in such a way that it cannot be easily used in the illegal production of a drug;

(3) whether the regulated chemical can be readily recovered from the drug product;

(4) the manner of packaging the drug product, including the package sizes;

(5) the manner of distribution and advertising of the drug product by the manufacturer and others;

(6) any specific actions taken by the manufacturer to prevent illegal diversion of the drug product; and

(7) any other factors which are relevant to and consistent with public health and safety.

The director of the Tennessee bureau of investigation shall grant or deny an exemption by rule or regulation in accordance with the Tennessee uniform administrative procedure act.

(d)

(1) A drug product that is lawfully marketed in this state on the effective date of this part and which is the subject of a request made under subsection (c) shall be deemed in compliance with this part:

(A) during the pendency of the request; and

(B) for sixty (60) days after denial of the exemption, unless the denial was based on a finding that the drug product is being illegally diverted.

(2) The manufacturer shall file a request under this subsection no later than sixty (60) days from the effective date of this Act.

(e) Applications pursuant to subsection (c) that involve a drug product for which an exemption was previously denied may be made only if there is a significant change in the data which led to the denial.

(f) The director of the Tennessee bureau of investigation may, by rule or regulation adopted pursuant to the Tennessee uniform administrative procedure act, modify or remove an exemption upon finding:

(1) that the drug product is being illegally diverted; or, .

(2) that there is a significant change in the data which led to the granting of the exemption.

In making a finding, the director of the Tennessee bureau of investigation shall consider the factors listed in subsection (c).

(g) If any chemical is designated or deleted as a listed chemical under the provisions of the Federal Controlled Substances Act, the director of the Tennessee

bureau of investigation may by rule or regulation similarly add or delete a chemical as a regulated chemical without making the determination required under subsection (a).

SECTION 8.

(a) Except as provided in Section 10, each regulated chemical distributor shall apply annually for a registration from the director of the Tennessee bureau of investigation and engage in a regulated chemical transaction only to the extent authorized by the registration and in conformity with this part.

(b) The application shall be in such form and provide such information as the director of the Tennessee bureau of investigation shall require by rule or regulation pursuant to the Tennessee uniform administrative procedure act.

(c) The director of the Tennessee bureau of investigation shall register an applicant unless the director determines that the registration shall be denied in accordance with Section 11(a).

(d) A separate registration is required for each principal place of business or professional practice of the regulated chemical distributor.

(e) A regulated chemical distributor shall notify the director of the Tennessee bureau of investigation of any change in business name, address, zip code, area code, and telephone number, or a change in managers, agents or representatives, no later than the seventh calendar day after the date of the change.

(f) A registration shall terminate if and when the regulated chemical distributor dies, ceases legal existence, discontinues business or professional practice, or changes ownership.

(g) No registration shall be assigned or otherwise transferred except upon such conditions as the director of the Tennessee bureau of investigation may specifically designate and then only pursuant to the director's written consent.

SECTION 9.

(a) Except as provided in Section 10 and subsection 8(i), a person shall obtain a permit to possess from the director of the Tennessee bureau of investigation each time the person seeks to possess a regulated chemical. The person shall possess a regulated chemical only to the extent authorized by the permit and in conformity with this part.

(b) An individual applicant shall provide the following information on an application furnished by the director of the Tennessee bureau of investigation:

(1) name, residential address other than a post office box, and telephone number;

(2) current and valid driver's license number or other current and valid official state-issued identification number;

(3) social security number;

(4) date of birth;

(5) prior convictions, including those with an appeal pending, which involve a felony violation of state or federal law, or the law of another country, or a misdemeanor violation of this part or Tennessee Code Annotated, Title 39, Chapter 17, Part 4;

(6) pending charges involving a felony violation of federal or state law, or the law of another country, or a misdemeanor violation of this part or Tennessee Code Annotated, Title 39, Chapter 17, Part 4;

(7) the type and quantity of each regulated chemical to be possessed;

(8) a complete description of the intended uses of each chemical;

(9) the location where each chemical is to be stored and used;

(10) the intended date and method of delivery of each regulated chemical;

(11) the intended method of disposal of any unused chemical or chemical waste; and

(12) any additional information requested by the director of the Tennessee bureau of investigation relating to possible grounds for denial as set forth in Section 11.

(c) Each owner, partner, corporate officer or manager, and any agent or representative of a business applicant shall provide the information required in subsections (b)(1) -(b)(6), and (b)(12). An individual making application on behalf of the business shall provide all the information required in subsection (b) in addition to:

(1) the individual's relationship to the business;

(2) an affirmation that the individual is authorized to make application on behalf of the business;

(3) the name, business address, other than a post office address, and business phone number of the individual's immediate supervisor;

(4) the name, address other than a post office address, and telephone number of the business; and

(5) the nature of the business and type of business ownership;

(d) The application shall be signed by the applicant under penalty of perjury, or in the case of a business applicant, by the individual making application on behalf of the business and, except as provided in subsection (f), each owner, partner, corporate officer or manager, and any agent or representative.

(e) An applicant for an initial permit shall submit with the application two notarized sets of ten print fingerprint cards. A business applicant is required to submit cards for the individual making application on behalf of the business and, except as provided in subsection (f), for each owner, partner, corporate officer or manager, and any agent or representative.

(f) An owner, partner, or corporate officer of a business applicant is exempted from the requirements of subsections (c), (d), and (e) of this section if the business applicant is a publicly held corporation of 35 shareholders or more.

(g) The director of the Tennessee bureau of investigation shall issue or deny a permit no later than 21 days after receipt of the completed application, unless the director determines there is good cause for an extension. The director shall state in writing the reasons for the extension and the new time period for issuance or denial of the permit. The applicant shall have a right to appeal the director's failure to act within the prescribed time period pursuant to the Tennessee uniform administrative procedure act.

(h) The permit shall consist of five parts, including:

(1) one copy to be retained by the applicant;

(2) one copy to be retained by the director of the Tennessee bureau of investigation;

(3) one copy to be delivered to the regulated chemical distributor by the applicant;

(4) one copy to be delivered to the appropriate local law enforcement agency; and

(5) one copy to be attached to the container of the regulated chemicals and to be kept with the chemicals at all times. In the case of multiple containers related to a single permit, a label reflecting the permit number shall be attached to each additional container.

(i)

(1) A possessor may submit a comprehensive monthly report to the director of the Tennessee bureau of investigation in lieu of the permit required by this section if the director authorizes upon finding in writing that:

(A) the possessor is eligible to apply for a permit;

(B) there are no grounds for denial of a permit pursuant to Section 11; and

(C)

(i) there is a regular relationship of supply and purchase between a regulated chemical distributor and the regulated chemical possessor with respect to the chemical; or

(ii) the regulated chemical possessor has established a record of use of the chemical solely for a lawful purpose.

(2) The comprehensive monthly report shall be submitted no later than 15 calendar days after the end of the calendar month which is the subject of the report. It shall be submitted on a form which the director of the Tennessee bureau of investigation shall provide, and shall include:

(A) the quantity of the chemical possessed;

(B) the date and method of delivery of the chemical;

(C) the physical location where the chemical was stored and used;

(D) the use of the chemical;

(E) the method of disposal of any unused chemical or chemical waste; and

(F) any other information required by the director of the Tennessee bureau of investigation.

(3) The possessor shall notify the director of the Tennessee bureau of investigation of any change in status relevant to any grounds for suspension or revocation of a comprehensive monthly report authorization no later than seven calendar days after the change.

(4) The authorization shall consist of four parts and, in lieu of a permit, be retained and delivered as provided in subsection (h) (1), (2), (3), and (4).

(5)

(A) The grounds for suspension or revocation of a permit under Section 11 shall constitute grounds for suspension or revocation of the authorization.

(B) The director of the Tennessee bureau of investigation shall suspend or revoke an authorization to submit a comprehensive monthly report in accordance with the procedures described in Section 11 (c), (d), and (e).

SECTION 10.

(a) A person is ineligible to apply for a permit or registration if the person:

(1) is an individual less than 18 years of age or a business in which an individual under 18 years of age is in the capacity of owner, partner, corporate officer, manager, agent, or representative.

(2) has been convicted of a felony violation of federal or state law, or the law of another country, or a federal or state misdemeanor violation involving a controlled substance, controlled substance analog, or a chemical subject to regulation; or

(3) has had a federal or state registration, or a registration from another country, to manufacture, distribute, dispense or possess controlled substances or any chemical subject to regulation denied, suspended, or revoked.

(b) An applicant, registrant, or permit holder shall notify the director of the Tennessee bureau of investigation of any change in status regarding the conditions listed in this section no later than the seventh calendar day after the change.

SECTION 11.

(a) The director of the Tennessee bureau of investigation may deny, suspend, or revoke a registration or permit to possess upon finding that the applicant, registrant, or permit holder:

(1) has failed to make proper application to the director of the Tennessee bureau of investigation pursuant to Sections 8 and 9 and any applicable rule or regulation;

(2) has failed to demonstrate that the chemical will be used solely for legitimate purposes;

(3) has violated any rule or regulation of the director of the Tennessee bureau of investigation or any provision of this part or Tennessee Code Annotated, Title 39, Chapter 17, Part 4;

(4) has failed, or does not demonstrate the ability, to maintain effective controls against diversion of regulated chemicals into other than legitimate medical, scientific, research, or industrial channels;

(5) has materially falsified or omitted material information from any application, record, report, inventory, or other document required to be kept or filed under this part or any applicable rule or regulation; or

(6) has committed such acts as would render the person's registration or permit inconsistent with the public interest as determined by the director of the Tennessee bureau of investigation.

(b) An applicant, registrant, or permit holder shall notify the director of the Tennessee bureau of investigation of any change in status regarding the conditions listed in subsection (a) no later than the seventh calendar day after the change.

(c) Before denying, suspending, or revoking a registration or permit under subsection (a), the director of the Tennessee bureau of investigation shall cause to be served upon the applicant, registrant, or permit holder an order to show cause why a

registration or permit should not be denied, suspended, or revoked. The order to show cause shall contain a statement of its basis and shall call upon the applicant, registrant, or permit holder to appear before the appropriate person or agency at the time and place within 30 days after the date of service, of the order. The proceedings shall be conducted in accordance with the Tennessee uniform administrative procedure act without regard to any criminal prosecution or other proceeding. An applicant, registrant, or permit holder shall have a right to appeal an adverse decision pursuant to the Tennessee uniform administrative procedure act.

(d) The director of the Tennessee bureau of investigation shall suspend, without an order to show cause, any registration or permit simultaneously with the institution of proceedings described in subsection (a) if the director of the Tennessee bureau of investigation finds there is imminent danger to the public health or safety. The suspension shall continue in effect until the conclusion of the proceedings, including review thereof, unless withdrawn by the director of the Tennessee bureau of investigation or dissolved by a court of competent jurisdiction.

(e) The director of the Tennessee bureau of investigation shall promptly provide the appropriate law enforcement agencies the name, address, and phone number of any individual whose registration or permit has been denied, suspended, or revoked under this section.]

SECTION 12.

(a) Each regulated chemical distributor shall obtain and each purchaser shall present the following identification prior to receipt or distribution of any regulated chemical:

- (1) the registration number, or permit, or monthly report authorization of the purchaser;

(2) a current and valid driver's license or other current and valid official state issued identification containing a photograph of the individual purchaser or individual receiving the regulated chemical on behalf of a business, and the purchaser's or recipient's residential or mailing address other than a post office box; and

(3) the motor vehicle license and vehicle identification number of the motor vehicle used in the regulated chemical transaction.

(b) A regulated chemical possessor authorized to submit a monthly report pursuant to Section 9 (i) may designate an individual to receive the regulated chemical on the possessors behalf for purposes of subsection (a).

SECTION 13.

(a) Each regulated chemical distributor and regulated chemical possessor:

(1) shall prepare annually a complete, legible, and accurate physical count of all regulated chemicals on hand. The physical count shall be prepared on the effective date of this act and every year thereafter or, if authorized by the director of the Tennessee bureau of investigation, on the annual general physical inventory date of a regulated chemical distributor or regulated chemical possessor;

(2) shall include on the record of each physical count, the date it was conducted, whether the count was taken as of the opening or as of the closing of business on that day, the name of the preparer, and any other information which the director of the Tennessee bureau of investigation may require by regulation. The record shall be maintained for four (4) years after the date of the count.

(b) Each regulated chemical distributor and regulated chemical possessor shall keep a record of each regulated chemical transaction in which it engages for four (4) years after the date of the transaction.

(c) A record required under subsection (b):

(1) shall be kept in a readily retrievable manner and shall include:

(A) the date of the regulated chemical transaction;

(B) the identity of each party to the transaction;

(C) the description and license number of any vehicle used during the transaction;

(D) a statement of the quantity and form of the regulated chemical;

(E) the permit issued for the transaction; and

(F) a description of the method of transfer.

(2) shall be available for inspection and copying as authorized under Section 18.

SECTION 14.

(a) Each regulated chemical distributor and regulated chemical possessor shall report to the director of the Tennessee bureau of investigation:

(1) any regulated chemical transaction involving an unusual quantity of a regulated chemical;

(2) a method of payment involving \$99.00 or more in cash, currency or money orders;

(3) any loss, spillage, breakage or theft of a regulated chemical or breakage of a container in which a regulated chemical is stored;

(4) any discrepancy between the quantity of regulated chemicals shipped and received;

(5) any regulated chemical transaction involving circumstances which would indicate to a reasonable person that a regulated chemical might be used or disposed of in violation of this part or Tennessee Code Annotated, Title 39,

Chapter 17, Part 4, or applicable Environmental Protection Agency laws or regulations; or

(6) any other regulated chemical transaction required to be reported by the director of the Tennessee bureau of investigation as necessary to protect public health and safety.

(b) Submission of the report required by subsection (a) other than that identified in the permit or authorization issued under Section 10;

(8) fail to present, or to present false or fraudulent identification when identification is required by Section 12;

(9) knowingly or intentionally furnish false or fraudulent material information in, or omit any material information from, any application, report, record, inventory or other document required to be kept or filed under this part or any applicable rule or regulation;

(10) fail to attach a permit or label as required by Section 9;

(11) possess a regulated chemical in violation of a rule or regulation of the director of the Tennessee bureau of investigation;

(12) refuse or fail to make, keep, submit or furnish an application, record, report, inventory, notification or other information required under this part or any applicable rule or regulation;

(13) refuse entry into controlled premises for any inspection authorized by Section 9 or 10.

(c) A person who commits an offense described in subsections (a) (1)-(4) and (b) (1)-(9) is guilty of a Class E felony.

(d) A person who commits an offense described in subsections (a)(5) and (b)(10)-(13) is guilty of a Class A misdemeanor.

(e) A person who commits a second or subsequent offense described in subsection (c) is guilty of a Class D felony.

(f) A person who commits a second or subsequent offense described in subsection (d) is guilty of a Class E felony.

(g) In addition to any other penalty imposed, a corporation which commits an offense described in this section shall be subject to a civil fine of not more than ten thousand dollars (\$10,000).

SECTION 16.

(a) In addition to any fine or imprisonment imposed under Section 15 of this Act, the following civil assessment shall be imposed:

(1) Ten thousand dollars (\$10,000.00) for each violation described in subsections (a)(5) and (b)(10)-(13) of Section 15;

or the actual cleanup costs of illegal laboratory sites, whichever is greater; and

(2) One hundred thousand dollars (\$100,000.00) for each violation described in subsections (a)(1)-(4) and (b)(1)-(9) of Section 15 or the actual cleanup costs of illegal laboratory sites, whichever is greater.

(b) The assessment provided for in this section shall be collected as provided by law for the collection of other civil assessments and judgments.

(c) All monies collected under this section shall be deposited to the state general fund and used for the enforcement of this part and the cleanup of illegal laboratory sites.

(d) Monies from the fund shall not supplant any other local, state or federal funds.

SECTION 17.

(a) The director of the Tennessee bureau of investigation is authorized to conduct any investigation necessary to determine compliance with this part, and in accordance with the Tennessee uniform administrative procedure act may subpoena witnesses, compel their attendance and testimony, and require the production of

documentary evidence relevant to the investigation. The director of the Tennessee bureau of investigation may invoke the aid of the criminal court in the jurisdiction of which the investigation is carried on, or in which the subpoenaed person resides, carries on business, or may be found, to compel compliance with the subpoena.

(b) Except as otherwise provided, no documentary material, transcripts, oral testimony, or copies in the possession of the director of the Tennessee bureau of investigation shall be available prior to the filing of a criminal proceeding for examination by any individual other than the director of the Tennessee bureau of investigation, the director's designee, or a local, state or federal law enforcement officer without the consent of the person who produced the material or transcripts.

(c) The director of the Tennessee bureau of investigation is authorized to promulgate rules and regulations, and to charge reasonable and non-refundable registration, permit, and monthly report authorization fees, which the director deems necessary and appropriate for the efficient and effective implementation of this part. All non-refundable fees shall be used for and shall not exceed actual processing costs.

SECTION 18.

(a) The director of the Tennessee bureau of investigation, the director's designee, or a local, state, or federal officer empowered by law to conduct investigations of or to make arrests for drug law offenses is authorized to conduct administrative inspections of controlled premises in accordance with the requirements of this section.

(b) The director of the Tennessee bureau of investigation, director's designee, or any law enforcement officer, may inspect controlled premises after making a demand to conduct an inspection and presenting appropriate credentials to any person identified in an application submitted under Section 8 or 9, or if no such person is present or readily available, to any person present at the controlled premises.

(c) The demand for inspection must be made and the inspection conducted during regular and usual business hours. The inspection may include:

(1) inventorying any stock of any regulated chemical and obtaining samples;

(2) copying records required by this part to be, or in fact, kept; and

(3) inspecting, within reasonable limits and in a reasonable manner, all pertinent equipment, apparatus, finished and unfinished material, containers and labeling found thereon, and all other things which help determine compliance with this part including records, files, papers, processes, controls and facilities.

SECTION 19.

(a) In addition to procedures provided in Section 18 and subsection (e), an judge of a court of record within the judge's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants to conduct administrative inspections and seize property as authorized by this part. For the purpose of issuance of an administrative inspection warrant, probable cause exists upon a showing of a valid public interest in the effective enforcement of this part, or rules adopted under this part, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(b) A warrant shall be issued only upon an affidavit of the director of the Tennessee bureau of investigation, the director's designee, or an officer, sworn to before the judge, and establishing grounds for issuing the warrant. If the judge or magistrate is satisfied that, grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, the conveyance, the building or other premises to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any.

(c) The warrant shall:

- (1) state the grounds for its issuance and the name of the affiant;
- (2) be directed to a person authorized by this section to serve and execute the warrant;
- (3) command the person to whom it is directed to inspect the area, conveyance, building or other premises identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
- (4) identify the items or types of property to be seized, if any;
- (5) allow the sale or destruction of regulated chemicals or equipment if appropriate and the deposit of the proceeds of any sale with the court; and
- (6) direct that it be served during normal business hours or other hours designated by the magistrate and designate the magistrate to whom it shall be returned.

(d) A warrant issued pursuant to this section must be served and returned within thirty (30) days of its date of issue unless, upon a showing of a need for additional time, the judge orders otherwise. If property is seized pursuant to a warrant, a copy of the warrant shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken, or the copy and receipt shall be left at the place from which the property was taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person serving the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person serving the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) This section does not prevent warrantless entries and administrative inspections, including seizures of property, during times other than normal business operating hours:

(1) in situations presenting imminent danger to health or safety; or

(2) in an emergency or other exigent circumstance where time or opportunity to apply for a warrant lacking.

SECTION 20.

(a) All regulated chemicals which have been or are intended to be manufactured, provided, sold, furnished, transferred, delivered, or possessed in violation of this part shall be deemed contraband, seized and summarily forfeited to the state.]

(b) A violation of this part shall constitute conduct giving rise to forfeiture under Tennessee Code Annotated, Title 40, Chapter 33, Part 2.

SECTION 21.

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 22.

For the purposes of the director of the Tennessee bureau of investigation promulgating rules to effectuate the purpose of this act, it shall take effect upon becoming a law, the public welfare requiring it. For all other purposes it shall take effect on October 1, 2000.